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UNCLAS SECTION 01 OF 03 LIMA 000870

SIPDIS

DEPT FOR WHA/AND, EB/IPE SWILSON
COMMERCE FOR 4331/MAC/WH/MCAMERON
DOC FOR J. BOGER
USPTO FOR J. URBAN
LOC FOR S. TEPP
USTR FOR J. CHOE-GROVES

E.O. 12958: N/A

TAGS: [ECON](#) [ETRD](#) [KIPR](#) [PE](#)

SUBJECT: PERU: SPECIAL 301 REVIEW

REF: A) State 23950 B) 04 Lima 1031 C) 04 Lima 1524

1. Summary. Post recommends that Peru remain on USTR's Special 301 Watch List for 2005. Peru continued to face high levels of copyright piracy, including a substantial increase in optical disc piracy affecting the audiovisual industry in 2004. Indecopi, the GOP's IPR administrative agency, conducted high-profile raids and continued its public awareness campaign. Peru continues to face several problems, including the overall inadequacy of enforcement and the lack of deterrent sentences. The GOP did not take any significant steps to resolve the pharmaceutical industry's concern about a lack of protection for proprietary test data. GOP trade officials indicated that the data protection issue should be resolved during the U.S.-Andean free trade negotiations in 2005. End Summary.

High Rates of Optical Disc Piracy

2. Despite Indecopi's efforts, copyright piracy rates continued to climb in 2004. The audiovisual industry suffered from a dramatic increase in pirated optical discs, with an estimated piracy level of almost 75 percent, up from 65 percent in 2003. Jose Vega, General Manager of Blockbuster Peru, informed us that the motion picture industry lost an estimated \$5 million in 2004 due to audiovisual piracy. The large amount of imported blank optical discs, as well as the wide availability of DVD technology, helps account for this increase. Peru also has one of the highest rates of musical piracy in the world. According to the Anti-Piracy Crusade, 98 percent of CDs in Peru are pirated. Martin Moscoso, head of Indecopi's copyright office, and the Business Software Alliance noted that Indecopi estimated that business software piracy levels have decreased from 60 percent in 2003 to 56 percent in 2004.

Efforts to Rein in Piracy But More Coordination Needed

3. Indecopi continued its "Anti-Piracy Crusade," which began in 2002. Indecopi's anti-piracy efforts in 2004, in collaboration with other government agencies as well as the private sector, focused on: 1) intensifying enforcement actions and 2) expanding the public awareness campaign. Indecopi's copyright office conducted, jointly with the national police and SUNAT (Peru's tax and customs agency), 37 raids in 2004 and confiscated over \$20 million in pirated goods and blank optical discs. In March 2004, the Peruvian police, coordinating with one of Peru's special IPR prosecutors, successfully uncovered and seized a shipment of 750,000 blank optical discs valued at \$400,000 (Ref C). In December 2004, the national police raided a Lima shopping center where pirated goods are sold, confiscating over \$500,000 in pirated DVDs and CDs.

4. Private sector and Indecopi officials note that although SUNAT has participated in several seizures of pirated goods, it needs to become more involved in overall IPR enforcement. SUNAT assumed control of Peruvian customs in 2003 and has worked with Indecopi on several raids. The head of Indecopi's copyright office declared that SUNAT should take a more active role in coordinating and conducting raids, particularly at the ports. Currently, SUNAT is more focused on facilitating shipments at ports by quickly clearing containers. Many customs officials have had no prior training on how to recognize counterfeit goods.

Harsher Punishments for Copyright Infringements

5. Industry and Indecopi officials involved in the Anti-Piracy Crusade agree that the GOP needs to improve IPR enforcement. Both call for the establishment of specialized judges to handle IPR cases, as well as greater authority for the two special IPR prosecutors (who only have authority in

Lima). Currently, judges lack expertise in intellectual property matters and have avoided imposing harsh sentences on IPR violators. In July 2004, the GOP passed Law No. 28289, the Law on the Fight Against Piracy, which increased the minimum penalty for piracy from a two-year to a four-year sentence, with a maximum sentence of eight years. There have yet to be any convictions under the new law, although there are more than 1,000 IP cases pending before Peru's courts.

----- GOP Mandates the Use of Legitimate Software

16. In 2003, the GOP passed a decree mandating that all government agencies use legally procured open-source software. Unfortunately, this loosely written decree did not establish which GOP agency was to take the lead on implementation, nor did it designate penalties for violations of this decree. GOP agencies have until March 31, 2005 to erase all pirated software and install the legitimate versions. Peru's Software Association held several educational sessions for Congressmen in 2004, emphasizing the importance of using legal software. Mario Camara, Deputy Director General of the Office of E-Commerce and Information, informed us February 16 that not all agencies have complied with the requirement. With no agency designated as point of contact, it is difficult for the GOP to monitor progress. Camera noted that his office would meet with each GOP agency's Systems Office next week to encourage them to comply with the decree. Camera also warned that the lack of funding to purchase the new software might limit some agencies' ability to procure legal software.

----- Higher Taxes and a New Import Registry

17. A new decree passed as part of Peru's tax reform in January 2004 requires importers of blank CDs to make valued added tax payments in advance, improving SUNAT's ability to trace subsequent purchases. In November, SUNAT began imposing a higher tariff on all importers of blank optical discs (\$1.30 per DVD and \$0.25 per CD), in an effort to differentiate between legal and illegal importers.

18. In July, the GOP passed a law requiring that SUNAT establish an import registry for all persons and companies importing blank optical discs and recording equipment. With the registry, SUNAT would be able to monitor the frequency of optical disc importation and target those companies that cannot justify legal sales of these discs. To date, SUNAT has not yet established this registry.

----- Pharmaceutical Data Protection

19. The GOP did not take significant action in 2004 to improve the protection of confidential pharmaceutical data. The issue of data protection is increasingly sensitive, as local generic drug producers have high levels of political clout. Trade officials continue to argue that the TRIPs Article 39.3 does not mandate any specific period of data exclusivity. Peru, which is, along with Colombia and Ecuador, negotiating a free trade agreement with the United States, intends to resolve our data exclusivity concerns in the FTA process.

----- Comment: Recommend No Change in Status

10. Post recommends that Peru remain on USTR's Special 301 Watch List due to the continued high levels of piracy and copyright violations, as well as the continued lack of protection for pharmaceutical test data. Despite increased focus and awareness of IPR problems, the GOP has not increased judicial enforcement of existing laws in order to create a meaningful deterrent nor established clear administrative measures for government agencies to comply with those laws.

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